

ST. LUKE'S HOSPITAL, INC., PETITIONER, VS. MINISTER OF LABOR, THE NATIONAL LABOR RELATIONS COMMISSION, ARBITER CEFERINA DIOSANA AND EDITHA B. BACHOCO, RESPONDENTS.

G.R. Nos. 54068 and 54142. August 30, 1982

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for review on certiorari of the decision of the Minister of Labor, Honorable Blas Ople dated May 30, 1980 reversing a contrary order dated April 2, 1979 of the same office, signed by then Deputy Minister Amado G. Inciong, which had not only upheld the suspension of herein private respondent Editha B. Bachoco from her position as Chief Dietician of petitioner St. Luke's Hospital and consequently dismissed her complaint for illegal separation. The order of Deputy Minister Inciong set aside the resolution of National Labor Relations Commission of May 22, 1978 which affirmed a decision of Labor Arbiter Ceferina J. Diosana of June 21, 1977 ordering the reinstatement of private respondent to her above-mentioned position with full back wages and other benefits accruing thereto, without loss of seniority rights, with option on her part to accept instead separation pay as fixed in said order.

It is not challenged that "petitioner is a private, charitable non-profit hospital institution duly organized and existing under the laws of the Philippines. As such it is endowed with a humanitarian purpose devoted as it is, to the preservation of life, the prevention of death, care, and treatment of the sick, the invalid and the infirm and the promotion of health." (Page 2, Petition)

Neither is it denied that:

"In the year 1975, petitioner faced a financial crisis of extremely serious magnitude in that, while its payables were mounting, it had uncollected receivables amounting to two million pesos. Aggravating the situation was the necessity of meeting its day-to-day operational needs among which were, the purchases of food, drug, medicine, hospital/medical supplies and equipment, apart from meeting its daily maintenance costs and payment of the wages of its employees. In view of the deteriorating, if not disastrous financial condition of petitioner, its Board of Trustees had to adopt emergency measures, systems, and devices in order to keep it running even at minimum hospital standards to enable it to fulfill and perform its mission to cure the sick, promote health, maintain life, and if possible, prevent death." (Pp. 20-21, Record.)

Private respondent was, at the time of her suspension/ dismissal, the Chief Dietician of the hospital. As a member of the managerial staff, she was in full command of her department, accountable only to petitioner's administration whose policies and regulations she was duty-bound to carry out. (Page 20, Record.)

According to the allegations of the petition, undenied by respondent:

"As petitioner's Chief Dietician, private respondent had a crucial role to play, considering that on her shoulders was lodged the responsibility of purchasing petitioner's food supplies as dictated by petitioner's dietary needs.

"One of petitioner's policies immediately adopted to meet its mounting financial problem was the purchase of petitioner's foodstuffs from the Success Food Supply with whom petitioner made arrangements to purchase its food supply needs on credit plus discount. Sometime in December, 1975, Dr. Charles S. Harn, petitioner's Medical Director and Acting Administrator at that time, following the petitioner's Board of Trustees' decision, instructed private respondent to purchase and acquire her department's food supplies from the aforesaid Success Food Supply. However, private respondent, then and there, expressed her vehement objection and dissatisfaction over this new procedure. Dr. Harn then advised private respondent to maintain the status quo after informing her that he would convey her objections/dissatisfactions to petitioner's Board of Trustees.

"On 20 December 1975, Dr. Harn, after consultation with, and upon instructions from petitioner's Board of Trustees, ordered private respondent verbally^[1] and in writing to implement petitioner's previous order to purchase available food supplies from Success Food Supply. However, private respondent obstinately refused to carry out petitioner's order aforementioned, as in fact, she continued to purchase petitioner's food supply from the old suppliers on 21 and 22 December 1975 contrary to petitioner's orders. Private respondent, in wilful and arrogant defiance, simply refused to purchase/acquire any single item/merchandise/food supply from the newly-designated food supplier of petitioner, accompanying her defiant refusal with an emphatic statement to the effect that she could not just be a robot. In view of private respondent's obstinacy and defiant gesture amidst the financial turmoil that confronted petitioner at that time, petitioner had no recourse but to suspend private respondent from her employment on 22 December 1975 on grounds of insubordination.

"Subsequently, in a letter dated 19 January 1976, petitioner terminated the services of private respondent for loss of confidence and insubordination, dispensing with the clearance application to the Department of Labor for the reason that private respondent was a managerial employee (Petitioner's exemption from the clearance requirement was recognized by the respondent Commission in its Resolution).

"Private respondent protested her suspension and dismissal and subsequently filed the two cases for illegal suspension and dismissal." (Pp. 21-22, Record.)

In reversing the decision of the Labor Arbiter and the National Labor Relations Commission affirming the same, Deputy Minister Inciong held:

"Before going into the merits of her dismissal, it is pertinent to mention herein that as Chief Dietician of respondent hospital, complainant was beyond doubt, a managerial employee and as such, respondent is not required to file an application for clearance before terminating her services. Likewise, we need not belabor the fact that as a managerial employee complainant is entrusted with sensitive functions, which by its nature command a high degree of trust and confidence from her employer. Once the element of trust and confidence is lost or destroyed, respondent has the right to terminate her services as managerial employee.

"As Chief Dietician, complainant was entrusted with the task, among others, to purchase food supplies required by her department. It was then her practice to obtain food supplies from different suppliers/stores.

"Sometime in December, 1975 respondent made arrangements with a certain Success Food Supply, whereby respondent would purchase all food supply needs from the latter. The supplier in turn agreed to give respondent discounts, purchase on credit, etc. On December 18, 1975, Dr. Charles Harn, Medical Director and Acting Administrator of respondent Hospital, upon instruction of its Board of Trustees directed complainant to purchase and acquire her department's food supplies from the aforesaid Success Food Supply. However, complainant expressed and explained to Dr. Harn her opinion and reasons why she can not agree to follow this new procedure. Dr. Harn therefore advised complainant to maintain the status quo informing her that he would convey her objections to the new procedure to the Board of Trustees. On or about 20 December 1975, after the Board of Trustees had met, Dr. Harn went to see complainant at her office and told her that the Board did not agree with her views and instructed her to obey the order of the Board and to start ordering from the Success Food Supply to which instruction, complainant demanded from Dr. Harn a written memorandum.

In the afternoon of the same day, Dr. Harn sent to complainant a written confirmation of his verbal instruction, earlier that day, to wit:

'This will confirm my verbal instruction that effective immediately as per order of the Board of Trustees, no more marketing is to be done on cash vouchers except for small items that may be needed immediately in the preparation of therapeutic diets and other necessities of an emergency nature. All orders for food supplies that can be filled by Mr. Dy Chuyalay of Success Food Supply - 39 Orosco Street, Quiapo, Manila are to be placed through him. He shall bill us every 15 days and we shall pay him within seven (7) days from receipt of his statement.

'x x x x x x x x' (Underscoring supplied).

"On December 21 and 22, 1975, despite the aforementioned verbal and written orders from Dr. Harn, complainant admittedly continued to purchase respondent's food supplies from the old suppliers (Exhibits '5', '5-A' to '5-E') and did not make a single purchase from Success Food Supply. (t.s.n., pp. 36-37, June 28, 1976 ; t.s.n., p. 6, August 23, 1976)

"On December 22, 1975 respondent suspended complainant from her employment and one month thereafter, or on January 19, 1976 , terminated her services for loss of confidence and insubordination.

"The question now before us is whether or not the suspension and subsequent dismissal of complainant was justified.

"Complainant contends that the supplies purchased on December 21 and 22, 1975 mentioned in Exhibits '5' to '5-E' were ordered days prior to December 20, 1975 by a staff dietician, Mrs. Elvira Agoncillo and that considering that it was almost Christmas time, it would be impossible to stop deliveries by the old suppliers.

"This is belied by the evidence on record. Most of the items delivered on December 21 and 22, 1975 were vegetables and admittedly, in the case of perishable goods, such as vegetables, the corresponding market order list and purchases are made everyday. Moreover, even assuming arguendo that the entire market order list was prepared days prior to the written order of December 20, 1975, it is also admitted by complainant that the list did not include all the supplies needed and purchased by the hospital on those days. Apparently, she purchased those other items and/or supplies from other sources, but certainly not from the Success Food Supply because complainant categorically stated that since she re-ceived the Order of December 20, 1975 from Dr. Harn, she never purchased supplies from the Success Food Supply. The reason advanced by complainant is that if she followed respondent's Order she would become a 'Robot' (Exhibit '8-Cf).

"Suffice it to state, that the decision of the Board of Trustees to purchase all their food supplies from the Success Food Supply was arrived at after careful study, in view of the poor financial condition of respondent and its finding that despite a big budget set aside by management for the Dietary Department, which is headed by complainant, the patients received inferior meals not commensurate to the financial outlay afforded her department. In order to save the hospital from bankruptcy, the Board of Trustees undertook vital measures to keep the hospital operating within the limits of its available financial resources and this order to purchase all food supplies from one supplier who agreed to give the hospital discounts, purchase on credit, etc. was one of those measures taken to reduce cost of operation.

"When Dr. Harn informed complainant of the Board's decision on December 18, 1975, complainant aired her dissent thereto and when she learned that her opinions were not accepted by the Board, she insisted in a demanding manner for a written memorandum to that effect and even after she was handed said written memorandum in the afternoon of December 20, 1975, she still persisted in purchasing items from the old suppliers. It was only at about noontime of December 22, 1975 when she finally asked a subordinate to get in touch with Mr. Dy Chuyalay of Success Food Supply for a conference regarding the Board's order which conference was scheduled in the afternoon of December 23, 1975 .

"Certainly, all these acts of complainant manifest a deliberate defiance of respondent's order and is tantamount to a breach of trust and confidence reposed in her by respondent which justified her suspension and subsequent dismissal from her employment by respondent. (Pp. 70-74, Record.)

Upon motion for reconsideration of respondent, and disagreeing with the foregoing decision of his Deputy, Minister Ople rendered another decision pertinently holding thus:

"On May 22, 1978 , the National Labor Relations Commission affirmed the decision stating that 'the complainant was dismissed without just cause.' The Commission declared: 'But it is precisely because she was a managerial employee that we marvel at, and are quite shocked by the manner in which she was treated. Without any semblance of investigation x x x, she was placed under suspension. x x x A manager can be dismissed for loss of confidence, yes, but the loss must have substantial basis. Also for insubordination, but this must be clearly established. None of these causes has been established here.' The respondent again appealed.

"On April 27, 1979 , an order was issued by this Office upholding the suspension and dismissing the complaint for illegal dismissal. The fact was underscored that petitioner received the order of the Board on December 20, 1975 but it was 'only at about noontime of December 22, 1975 when she finally asked a subordinate to get in touch with Mr. Dy Chuyalay of Success Food Supply for a conference regarding the Board's order.' From this, it was found that the 'acts of complainant manifest a deliberate defiance of respondent's order and is tantamount to a breach of trust and confidence reposed in her by respondent.' From this order, petitioner filed the instant motion for reconsideration.

"After a careful review of the records, we found the dismissal of petitioner unjustified. Indeed, no act of insubordination was clearly established in this case. It is true that the order of the Board was not carried out on that Sunday which followed its receipt by petitioner. But petitioner set out to effect its compliance the very next Monday which came to pass. To quote the Arbiter, 'complainant was not afforded with enough opportunity to execute fully the Board's order.' In fact, its compliance had already commenced when she was suspended with inordinate haste. Full execution of the Board's order might have been completed had not petitioner been dismissed while still under suspension — and had not the medical director rescinded the Board's order before that time. The letter of petitioner on February 9, 1976 ought to have impressed the Board of such assurance.

"Nor is the respondent's claim to loss of confidence availing to its cause. Petitioner committed nothing to occasion the loss. Under the law, the loss of confidence should spring from any of the circumstances mentioned in Article 283 of the Labor Code to justify the termination of employment. The Commission therefore put it aptly when it declared that 'the loss (of confidence) must have a substantial basis'. And we can only echo its finding that none was established in this case." (Pp. 65-67, Record.)

These two contradictory decisions of the Ministry of Labor should not be surprising because, indeed, by their very nature, the charges in question — insubordination and loss of confidence — are such that the determination of whether they are justified or not involve more subjective elements and factors than objective ones. Therefore, honest differences of opinions as to the proper resolution of the adverse claims of the parties can easily arise. Put differently, it does not seem realistic much less proper to apply purely objective criteria in deciding whether or not an employee is guilty of insubordination in such degree as to lose the trust and confidence of the employer, particularly, when dealing with employees holding managerial positions. These are subjective factors that inhere in the judgment of the employer regarding the conduct of its employees which could affect substantially any attempt to apply objective standards thereto. This is specially true, as already stated, when it comes to employees occupying managerial and sensitive positions. And, to Our mind, it was in the proper observance of this self-evident concept of the charges involved herein that the two ministers could not agree. Indeed, what might appear to be as reasonable when viewed objectively may actually be otherwise when considered from the

subjective point of view of the employer, whether in government or in private business. To cite but one example, loss and financial ruin of the employer may matter little to an objective investigator but surely, it can be the end of the world to the subjective eye of the employer.

The record shows that considering its very precarious financial situation, petitioner, as directed by its Board of Trustees, made arrangements with a certain supplier, the Success Food Supply, in regard to the food supplies of the hospital according to its dietary needs, under which arrangements, petitioner could purchase the supplies on credit and at a discount. Accordingly, respondent was directed by the Medical Director, Dr. Charles S. Harn, sometime in December 1975, around December 18, to be exact, to henceforth purchase the supplies needed by her from Success Food Supply. The immediate reaction of respondent was negative. She argued about difficulties in changing suppliers overnight, and otherwise made Dr. Harn feel and notice her displeasure and disagreement and perhaps rejection of the whole idea. Faced with such posture of his subordinate, Dr. Harn felt it was better to take up her objections with the higher authorities, and he told her so, adding that the status quo could be maintained in the meanwhile.

On December 20, 1975, however, Dr. Harn made it known to her that the Board of Trustees did not consider her observations/objections well taken and so, he directed her to follow the instructions he had previously conveyed to her. Revealing once more her negative reaction and in an unusual demonstration of audacity, she asked Dr. Harn to put his instructions in writing, which he did before the end of that day. The letter reads as follows:

"This will confirm my verbal instruction that effective immediately as per order of the Board of Trustees, no more marketing is to be done on cash vouchers except for small items that may be needed immediately in the preparation of therapeutic diets and other necessities of an emergency nature. All orders for food supplies that can be filled by Mr. Dy Chuyalay of Success Food Supply -- 39 Orosco Street, Quiapo, Manila are to be placed through him. He shall bill us every 15 days and we shall pay him within seven (7) days from receipt of this statement. (Underscoring supplied)." (Page 192, Record.)

Notwithstanding that the above directive explicitly says "effective immediately", respondent did not make her purchases from Success Food Supply on December 21 and 22. Discouraging on this point, petitioner states in its memorandum:

"The order is very clear. Private respondent understood that she had to purchase all food supplies only from one source -- the Success Food Supply. She knew that she should not order from any other supplier, but only from Success Food Supply. The order was very clear as to when she should begin purchasing all food supplies from Success Food Supply -- that she should do so effective immediately. Hence, all orders for food supply for the next day was already to be placed through Success Food Supply. She also understood what should be ordered immediately from Success Food Supply -- all food supplies that can be filled by Mr. Dy Chuyalay of Success Food Supply. The order did not give her any discretion as to what to order from Success Food Supply, and when to begin purchasing from Success Food Supply.

"Private respondent disobeyed the order.

"In the face of such clear, peremptory order, private respondent had no choice, but to obey, the more so when she knew that such an order was dictated by the financial emergency the Hospital was groaning under. But what did the private respondent do? Instead of obeying the order as it was her bounden duty to do, she still purchased on 21 and 22 December the food supplies, not from Success Food Supply, but from the old suppliers (Exhs. '5', '5-A' to '5-E'; TSN, June 28, 1976 ; pp. 36-37; August 23, 1976 ; p. 6).

"When private respondent did not immediately place the orders for food supply with Success Food Supply, she obstinately and wilfully disobeyed the clear and unmistakable order of her superiors. When private respondent likewise purchased the food supplies for the days following her receipt of the order from the old suppliers, and

not from Success Food Supply as she was unmistakably ordered to do, she also obstinately and wilfully disobeyed the order of the Board of Trustees. Such disobedience is an intentional disobedience to the command of his employer, which justifies peremptory dismissal. That is insubordination for it is a wilful disregard of an express direction and order of the employer and a refusal to obey a reasonable order (*McIntosh v. Abbot*, 120 N. E. 383, 231 Mass. 180; *Ochme v. Whittermore-Write Co.*, 181 N.E. 733, 735, 279 Mass. 258).

"No plausible justification for insubordination.

"Private respondent attempted to justify her obstinate insubordination by claiming that the purchases of vegetables for 21-22 December were made 'several days before said dates by her subordinate. Mrs. Elvira T. Agoncillo'. Such a claim is, as expressly stated in the Order dated 2 April 1979 (Annex 'B' to Petition) 'belied by the evidence on record'. The said decision continues that 'most of the items delivered on 21 and 22 December 1975 were vegetables and, admittedly, in the case of perishable goods such as vegetables, the corresponding market order list and purchases are made everyday. Moreover, even assuming arguendo that the entire market order list was prepared days prior to the written order of 20 December 1975, it is also admitted by complainant that the list did not include all the supplies needed and purchased by the hospital on those days. Apparently, she purchased those other items and/or supplies from other sources, but certainly not from the Success Food Supply because private respondent 'admitted that, since she received the order of December 20, 1975 from Dr. Harn, she never purchased supplies from the Success Food Supply'. The reason advanced by private respondent 'is that, if she followed respondent's order, she would become a 'robot' ' (Exhibit '8-c').

"Even if it be assumed, furthermore, *gratia argumenti*, that the purchase for food supplies for 21 and 22 December 1975 were made days ahead by Mrs. Elvira T. Agoncillo who was a subordinate of private respondent, Editha B. Bachoco, as Manager of the Dietary Department, had control of the department and was responsible for what happened in her department; she had control over the previous purchase orders placed by her subordinates. It was her responsibility to make all purchases by her department beginning 20 December 1975 conform to the peremptory order of said date. If private respondent really intended and wanted to obey the Board's peremptory, clear, and unmistakable order to immediately place the orders for food supply through Success Food Supply, she could and should have easily countermanded, revoked, and cancelled said previous orders, through the telephone, and it was her duty to do so as she was ordered to immediately purchase food supplies from Success Food Supply.

"It is an undisputed truism in management that a manager cannot excuse non-performance of or disobedience to an order that it is a subordinate who performed the act constituting the disobedience, especially so when the manager had opportunity to prevent the act of disobedience. No manager can shift responsibility to his subordinates. (Koontz and O'Donnell, *Principles of Management*, 1964, p. 56). Hence, private respondent cannot justify her disobedience by saying that the food supply was ordered days ahead by her subordinate, for she could and should, in the exercise of her authority, cancel said orders, and it was not difficult for her to do so, if she really wanted to obey the order.

"No rescission by Dr. Harn of Board order.

"The respondent Minister of Labor in his Resolution dated 30 May 1980, abused his discretion when he gravely misinterpreted the facts of the case. He stated that 'the medical director rescinded the Board order' before private respondent was suspended. There is no direct evidence that Dr. Harn rescinded the Board order; there are also no facts from which said rescission could be legitimately inferred.

"In the first place, no subordinate can legally rescind an order of his superior. The Board of Trustees of petitioner Hospital is the governing body of petitioner and Dr. Harn, who was then Acting Administrator, was under the Board of Trustees and, therefore, had to obey likewise the orders coming from the Board. In fact, the evidence in the case shows that, on 20 December 1975, Dr. Harn, in obedience to the order of the Board, ordered private respondent that 'effective immediately, as per order of the Board of Trustees, no more

marketing was to be done on cash basis x x x and that all orders for food supplies x x x are to be placed through Mr. Dy Chuyalay of Success Food Supply'.

"The fact that Dr. Harn, as noted by the Labor Minister, approved cash vouchers, one on 20 December 1975 for P400.00 for the marketing for 21 December 1975 and another for P400.00, to replenish the marketing cash fund on 21 December 1975 cannot serve as sufficient premises for the conclusion that Dr. Harn rescinded the order of the Board. The Labor Minister overlooked the material fact that petitioner was a Hospital where many sick patients were confined. Those patients had to eat on 21 and 22 December 1981 (sic) and it was the responsibility of the Hospital to give them food on those days. Inasmuch as private respondent obstinately refused to order the food supply from Success Food Supply and did not place such order for 21 December 1975, petitioner had nowhere to get such food supply. So, when the vegetables purchased by Mrs. Agoncillo were delivered to the Hospital, the latter had to accept the same, other-wise the personnel and patients in the Hospital would go hungry. Inasmuch as the delivery was accepted, the Hospital had to pay for the delivered goods. Does the Labor Minister think that it could have been better to refuse the vegetables or not pay for them? When Dr. Harn approved the cash vouchers, he acted only as the needs of the Hospital and the circumstances demanded. Such approval of cash vouchers could not be construed as a rescission of the Board's order which Dr. Harn knew he was not competent to do.

"The same can be said regarding the approval of the cash voucher on 21 December 1975 .

"Private respondent was given enough opportunity to execute the Board's order.

"The Minister of Labor also gravely abused his discretion when he found that private respondent 'was not afforded enough opportunity' to execute the Board's order, because private respondent 'set out to effect its compliance by the very next Monday which came to pass' referring to the fact that 'about noon-time of December 22, 1975' private respondent 'finally asked a subordinate to get in touch with Mr. Dy Chuyalay of Success Food Supply for a conference regarding the Board's order'. The verbal as well as the written confirmation of the verbal order, received by private respondent from Dr. Harn on 20 December 1975 ordered private respondent that 'effective immediately, as per order of the Board of Trustees, no more marketing is to be done on cash vouchers' and that 'all orders for food supplies x x x are to be placed through Mr. Dy Chuyalay of Success Food Supply'. It should also be noted that such an order was, in the words of the Order of the Deputy Minister dated 2 April 1979, 'arrived at after careful study, in view of the poor financial condition of 'the Hospital' and its finding that, despite the big budget set aside by management for the Dietary Department, which is headed by 'private respondent, the patients received inferior meals not commensurate to the financial outlay afforded her department'. The order was very specific as to when the food supplies were to be purchased from Success Food Supply -- that is effective immediately, such food supplies were to be ordered from Success Food Supply. Did not private respondent have opportunity to order from the Success Food Supply that afternoon of 20 December 1975 ? 20 December 1975 was a Saturday and stores are open on Saturday.

"Assuming that private respondent could not place the order for food supplies with Success Food Supply on 20 December 1975, did she not have opportunity to do so during the whole day of 21 December 1975 ? Even if 21 December 1975 was a Sunday, she could have placed the order, for food stores are open also on Sunday, the more so when said day was within the Christmas shopping season during which stores are open the whole day on Sunday. Assuming, furthermore, that she could not place an order with Success Food Supply on Sunday, 21 December 1975, what prevented her from placing such an order the next day, 22 December 1975 ? The only possible reason why she did not place the order for food supplies through Success Food Supply on 20, 21, and 22 December 1975 was that she did not like to be a 'robot' and she did not really intend to obey the order of the Board of Trustees. 'Where there is a will, there is a way', is a truism that can hardly be disputed.

"The fact that on 22 December 1975 private respondent asked one of her subordinates to arrange a conference between her and Success Food Supply and the conference was arranged for 23 December, further shows that, had she really wanted to obey the Board's order, she could have contacted Mr. Dy Chuyalay on 20, 21, and 22

December. If Mr. Dy Chuyalay was contacted on 22 December, there is no plausible reason why Mr. Dy could not have been contacted on 20 and 21 December. The only reason why private respondent did not or could not contact Mr. Dy Chuyalay on 20 and 21 December was that, she did not like to obey, for obedience to the order would make her a 'robot'.

"The conference with Mr. Dy Chuyalay scheduled on 23 December 1975 was not, moreover, compliance with the Board's order. The order was for her to place the order for food supplies immediately with Success Food Supply. She was not ordered and neither was she vested with discretion to arrange the terms of the purchase, for the Board had already made such arrangement; the order of 20 December 1975 expressly stated that Mr. Dy Chuyalay 'will bill us every fifteen (15) days and we shall pay him within seven (7) days from receipt of this statement'. Neither was she given any discretion as to when to execute the Board's order for the time of execution was explicit. In fine, all that was left to be done was the due and immediate implementation of the Board's order which she was duty-bound to perform.

"All the facts above stated lead only to two (2) conclusions justified in the premises: first, that private respondent Editha B. Bachoco had more than ample opportunity to comply with the Board's order; and second, Editha B. Bachoco did not obey the order only for the reason that she did not like to be a 'robot'.

"The very demand itself of a written order was already a defiance, more so was the outright manifest objection to the order.

"In the words of the Deputy Minister's order dated 2 April 1979, private respondent's having 'insisted in demanding a written memorandum' regarding the Board's order, and her having 'persisted in purchasing items from the old suppliers' in wanton disobedience to the Board's peremptory order 'certainly x x x manifest a deliberate defiance of respondent's (herein petitioner) order and is tantamount to a breach of trust and confidence reposed in her by respondent (herein petitioner) which justified her suspension and subsequent dismissal from her employment.'" (Pp. 192-200, Record.)

Consequently, as found in the decision of respondent Minister Ople:

"On the same day (December 22), Mr. William Quasha twice ordered Dr. Harn to suspend petitioner. In his letter, Mr. Quasha remarked: 'You informed me that between the 11th and 19th of December, she purchased P11,000 worth of food, following the procedure we have definitely ruled against x x x Consequently, we are going to investigate each and every purchase which she has made recently.' Acting on this letter, Dr. Hain, in turn, wrote petitioner:

'Inquiry from Success Food Supply revealed that you still have not ordered our food supplies thru Mr. Dy Chuyalay. x x x Due to this, the President of the Board has ordered your suspension from hospital duties effective immediately and to inform you that an investigation will follow.'

"On December 23, 1975, respondent filed a request for clearance/report of suspension with Regional Office No. IV, stating that complainant would be suspended for one month from December 23, 1975 to January 22, 1976 for insubordination.

"The hospital then conducted its investigation, but a report thereon disclosed that the prices of the supplies purchased from Beatriz Navarro from December 10 to 19, 1975, covered by Invoice Nos. 786-798, were 'fair and reasonable', and therefore, a check for the payment of the purchases was issued on January 6, 1976. On January 16, Dr. Harn issued an order stating that all food supplies which 'could be ordered directly from the manufacturer or direct imported may be ordered straight from them and not necessarily from Success Food Supply.'

"Meanwhile, hearings on January 12 and 16 before the Regional Office yielded no amicable settlement of the case, it appearing that the Board would not relent from its decision to suspend petitioner until January 22, 1976

"Then, on January 19, 1976, Dr. Harn wrote petitioner:

'Under the provisions of the Labor Code, specifically Article 211 (k), you are a managerial employee, being the head of the Dietary Department.

'Pursuant, likewise, to the provisions of Book V, Section 9 of Rule XIV, Rules and Regulations Implementing the Labor Code, we are dispensing with a clearance from the Secretary of Labor prior to your termination from the service of the Hospital.

'You are therefore advised that upon receipt hereof, your services are terminated effective at the close of business hours. Your services are being terminated for loss of confidence and insubordination.'" (Pp. 62-63, Record.)

Further, Minister Ople held in a decision, pertinent portions of which have already been quoted earlier herein. (See pp. 7-8 of this decision.)

Ordinarily, in a petition for review such as the one now before Us, the Court is inclined to uphold the findings of the Minister of Labor. But the instant case is somewhat unusual because the order at issue is a reversal of a previous one issued by the same office. For which reason, it behooves Us to compare the two decisions carefully and thereafter determine which of them conforms closer to Our own sense of justice and fairness, having in view all the attendant circumstances, like the very precarious financial situation of petitioner whose functions are humanitarian and the non-cooperative, on the one hand, and on the other, the negative attitude, to say the least, of private respondent towards emergency measures being taken by petitioner, to the end that it may be able to continue with less financial difficulty its charitable non-profit work, as well as the applicable principles in employer-employee relationship, taking note, in this connection that private respondent was occupying a managerial position without any fixed term.

After a judicious weighing of the above factors, We find Ourselves more inclined to sustain the order of Deputy Minister Inciong. We have arrived at this conclusion because We believe that the subjective standards that impelled the action of petitioner appear justified by the imperatives of its struggle for survival as a humanitarian institution, having no eye for profit but dedicated to charity, which should not be hampered and hamstrung by the undeniably rather defiant and arrogant conduct of private respondent. By and large, it is clear to Us that her reaction was one of resistance and at least delay rather than dutiful obedience, which subordinates owe to orders of superiors. True, in some ways she made gestures of compliance but one has to be very naive not to perceive that she felt annoyed and in retaliation tried at the very least to annoy also her superiors. We are convinced that subjectively speaking, from the point of view of her employer, if there was no outright insubordination on her part, she gave her superiors enough reason to lose their trust and confidence in her. And considering that she has not made any move all this time to press for early resolution of her case, it is reasonable to suppose that she must have secured comparable if not better employment elsewhere, since her dismissal by petitioner. Viewed in the light of the peculiar circumstances of this case, it looks to Us more practical and proper to leave things as they are instead of compelling petitioner to reinstate in a sensitive position one whose attitude could perchance spell not only more financial difficulties to petitioner but also possible inadequacies in the required dietary standards it has to maintain for its patients. Petitioner does not have to wait "for one more serious act of insubordination and disrespect to express instructions of management -- (which would warrant or) mean forfeiture of [her] right to employment with petitioner." (*Filipinas Gold & Country Club, Inc. vs. Philippine Transport & General Workers Organization, et al.*, G.R. No. 57460, March 29, 1982.)

In another case where security of tenure of managerial employees was invoked, that of *Domingo F. Bondoc vs.*

People's Bank and Trust Company, et al., 103 SCRA 599, We held:

"We hold that under the peculiar or particular facts of this case the termination of Bondoc's employment was lawful and justified and that no grave abuse of discretion amounting to lack of jurisdiction was committed by the Presidential Executive Assistant in affirming the NLRC's decision sustaining the termination of his employment.

"Bondoc was not employed for a fixed period. He held his position of department manager at the pleasure of the bank's board of directors. He occupied a managerial position and his stay therein depended on his retention of the trust and confidence of the management and whether there was any need for his services.

"Although some vindictive motivation might have impelled the abolition of his position, yet, it is undeniable that the bank's board of directors possessed the power to remove him and to determine whether the interest of the bank justified the existence of his department.

"Under the old Termination Pay Law, it was held that in the absence of a contract of employment for a specific period the employer has the right to dismiss his employees at anytime with or without just cause (De Dios vs. Bristol Laboratories (Phils.), Inc., L-25530, January 29, 1974, 55 SCRA 349, 358; Jaguar Transportation Co., Inc. vs. Cornista, L-32959, May 11, 1978, 83 SCRA 77).

"It may be noted that under Policy Instructions No. 8 of the Secretary of Labor 'the employer is not required to obtain a previous written clearance to terminate managerial employees in order to enable him to manage effectively'. (See Associated Citizens Bank vs. Ople, L-48896, February 24, 1981.)

"The petitioner invokes the policy of the State to assure the right of 'workers' to security of tenure (Sec. 9, Art. II, Constitution).

"That guarantee is an act of social justice. When a person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary and unjust deprivation of his job.

"Article 280 of the Labor Code has construed security of tenure as referring to regular employment and as meaning that 'the employer shall not terminate the services of an employee except for a just cause or when authorized by' the Code.

"As already noted above, the facts of this case do not warrant the conclusion that Bondoc's right to security of tenure was oppressively abridged. He knew all along that his tenure as a department manager rested in the discretion of the bank's board of directors and that at anytime his services might be dispensed with or his position might be abolished."

Of course, the Bondoc case involved the consequent abolition of Bondoc's position as a result of the merger of two banks. There was no element of insubordination nor loss of confidence, but its relevance hereto lies in the fact that the savings that would accrue in the abolition of Bondoc's position could be comparable to the savings that petitioner herein was trying to make by its orders which respondent failed to comply with in due time, and only after a veritable show of resistance and defiance that justifiably caused petitioner to lose the degree of confidence and trust in her, thereby making her continuance in her employment undesirable, if not untenable.

PREMISES CONSIDERED, it is Our judgment that the order of Minister Ople complained of should be as it is hereby set aside, constituting as it does a grave abuse of discretion, and the order of Deputy Minister Inciong of April 2, 1979 is hereby affirmed, but on grounds of liberality, if not on equitable considerations, petitioner is hereby ordered to pay private respondent separation pay in an amount equivalent to two months salary plus One Thousand Pesos (P1,000.00), for her attorney's fees. No further costs.

Aquino, Concepcion, Jr., Abad Santos, De Castro, and Escolin, JJ., concur.
Guerrero, J., see separate concurring opinion.

[1] The order had to be put in writing upon demand of respondent Bachoco.

CONCURRING OPINION

GUERRERO, J.:

I concur in the result of the decision of my esteemed and well-respected colleague, Justice Barredo, who will soon retire from this Court after a brilliant and distinguished career that will be long remembered and admired as are the many decisive, forceful and profound decisions penned by him in the many constitutional questions and political cases raised to the Supreme Court. By their justness, reasoning and wisdom, his judgments are now as legal masterpieces in Philippine law and jurisprudence.

I agree with him in his incisive and realistic analysis of the problem in the instant labor case that "the charges in question - insubordination and loss of confidence - are such that the determination of whether they are justified or not involve more subjective elements and factors than objective ones, such as loss and financial ruin of the employer which would matter little to an objective investigator but surely, it can be the end of the world to the subjective eye of the employer."

But I also sustain the general principle enunciated by the National Labor Relations Commission in its decision affirming that of the Labor Arbiter that "a manager can be dismissed for loss of confidence, yes, but the loss must have substantial basis. Also, for insubordination, but this must be clearly established." I do not believe that under the Labor Code, the employer may arbitrarily, whimsically and despotically dismiss a manager for any sham or flimsy reason, much less may the latter be forced to resign by reason of any whimsical, vindictive or unreasonable cause. Whether the basis for the dismissal for loss of confidence and insubordination is substantial, real and material and whether such basis has been clearly established must ultimately and finally rest with the Court.

Upon the particular and peculiar facts of the instant case which clearly show that respondent obstinately and wilfully disobeyed the clear and unmistakable order of her superiors, which order was dictated by the financial emergency the hospital was groaning under, the order of Deputy Minister Inciong calls for my affirmance with payment of separation pay on grounds of liberality and equity.

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